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In re Application of PIANA et al.
Application No.: 10/510,235
PCT Application No.: PCT/FR03/00683
Int. Filing Date: 04 March 2003
Priority Date Claimed: 04 March 2002
Attorney Docket No.: P25925
For: VACUUM MASSAGE DEVICE COMPRISING
THE AFFUSION OF WATER OR ANY OTHER
SUITABLE LIQUID

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: DECISION ON PETITION
: UNDER 37 CFR 1.137(b)
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Applicants' "Petition For Revival Under 37 CFR 1.137(b)," filed in the United States Patent and Trademark Office (PTO) on 13 October 2004 is GRANTED.

BACKGROUND

On 04 March 2003, applicants filed international application PCT/FR03/00683. The international application claims a priority date of 04 March 2002 and designates the United States. The deadline for entry into the United States National Stage was thirty months from the priority date, that is 04 September 2004. The application became abandoned at midnight 04 September 2004 for failure to pay the basic national fee.

On 13 October 2004, applicants filed the instant petition for revival accompanied by, *inter alia*, the requisite basic national fee as required by 35 U.S.C. 371(c)(1), a copy of the international application as required by 35 U.S.C. 371(c)(2), an executed declaration as required by 35 U.S.C. 371(c)(4) and the petition fee of \$1370.

DISCUSSION

A petition to revive an abandoned application under 37 CFR 1.137(b) must be filed without intentional delay from the time the application became abandoned and/or applicant first became aware of the abandoned status of the application. A petition under 37 CFR 1.137(b) must be accompanied by (1) a proper reply, (2) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unintentional, (3) the petition fee required by law, and (4) a terminal disclaimer and fee (if the international application was filed prior to June 8, 1995). A payment of the basic national fee constitutes a proper reply for entry into the national stage.

Applicant's statement in the petition that "the entire delay in entering the national stage was unintentional" satisfies the requirements of 37 CFR 1.137(b)(3). The submission of the national fee and the copy of the international application satisfies 37 CFR 1.137(b)(1). The payment of the petition fee satisfies the requirement under 37 CFR 1.137(b)(2). A terminal disclaimer is not required because the application was filed on or after 08 June 1995. Therefore, the requirements for a grantable petition under 37 CFR 1.137(b) have been satisfied.

The executed declaration submitted with the instant petition satisfies the requirements under 35 U.S.C. 371(c)(4). The basic national fee submitted with the instant petition satisfies the requirements under 35 U.S.C. 371(c)(1). The copy of the international application submitted with the instant petition does not satisfy the requirements under 35 U.S.C. 371(c)(2) because a translation into English was not included.

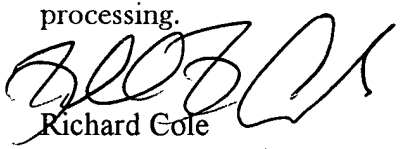
Upon review of all the papers in the instant application, a translation of international application into English was submitted, *inter alia*, on 11 January 2005.

CONCLUSION

The petition to revive the application abandoned under 37 CFR 1.137(b) is GRANTED as to the National Stage in the United States of America.

Applicants have satisfied the filing requirements under 35 U.S.C. 371.

The application has an international filing date of 04 March 2003 under 35 U.S.C. 363 and a date of 11 January 2005 under 35 U.S.C. 371(c)(1), (c)(2) and (c)(4). The application is being returned to the National Stage Processing Division of the Office of PCT Operations for continued processing.


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